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10/536,578	08/11/2006	Jung-Min Lee	101371-38	9904
27387 7590 03/14/2011				
LONDA, BRUCE S. NORRIS MCLAUGHLIN & MARCUS, PA 875 THIRD AVE, 8TH FLOOR NEW YORK, NY 10022				
EXAMINER				
ALLEN, JEFFREY R				
ART UNIT		PAPER NUMBER		
3781				
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03/14/2011		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/536,578

**Applicant(s)**

LEE, JUNG-MIN

**Examiner**

JEFFREY ALLEN

**Art Unit**

3781

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 May 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The listing of references in the Search Report is not considered to be an information disclosure statement (IDS) complying with 37 CFR 1.98. 37 CFR 1.98(a)(2) requires a legible copy of: (1) each foreign patent; (2) each publication or that portion which caused it to be listed; (3) for each cited pending U.S. application, the application specification including claims, and any drawing of the application, or that portion of the application which caused it to be listed including any claims directed to that portion, unless the cited pending U.S. application is stored in the Image File Wrapper (IFW) system; and (4) all other information, or that portion which caused it to be listed. In addition, each IDS must include a list of all patents, publications, applications, or other information submitted for consideration by the Office (see 37 CFR 1.98(a)(1) and (b)), and MPEP § 609.04(a), subsection I. states, "the list ... must be submitted on a separate paper." Therefore, the references cited in the Search Report have not been considered. Applicant is advised that the date of submission of any item of information or any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the IDS, including all "statement" requirements of 37 CFR 1.97(e). See MPEP § 609.05(a).

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the sub-spouting

member must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 5, 6, 9-12 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Lloyd et al. (U.S. Patent Application Publication No. 2002/0110622).

6. Lloyd discloses a food/beverage container (80) comprising a main body (82) having a receiving cavity and a spouting portion (Fig. 3, portion extending up to opening 86), a sub-receiving portion (84) formed in the main receiving cavity and located on a top portion thereof, a seal member (88) closing the sub-receiving cavity and spouting portion, and an insertion hole (86) in the form of an air intake hole. Lloyd further discloses wherein the seal member can be resealed (par. 4, lines 6-8), and wherein the main body is increased in diameter as it goes downward and the bottom of the main body is sealed by a seal member (88, depending on the orientation of the container). Note that the claimed processes of claim 16 are being treated as product-by-process limitations. As set forth in MPEP 2113, product by process claims are NOT limited to the manipulations of the recited steps, only to the structure implied by the steps. Where a product by process claim is rejected over a prior art product that appears to be identical, although produced by a different process, the burden is upon the applicant to come forward with evidence establishing an unobvious difference between the two. Once a product appearing to be substantially the same or similar is found, a 35 U.S.C.

102/103 rejection may be made and the burden is shifted to applicant to show an unobvious difference. See *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983).

7. Claims 1, 4 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Woollen et al. (U.S. Patent No. 3,288,344).
8. Woollen discloses a food/beverage container comprising a main body (11) having a main receiving cavity (12) container contents (20) and a spouting portion (18) for discharging contents, a sub receiving cavity (10) formed in the main receiving cavity and being separated from the main receiving cavity (Fig. 3), and wherein the spouting portion has a spout member (19) installed therein that can slide into the spouting portion.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 7, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd in view of Schmidt (U.S. Patent No. 6,082,614).
11. Lloyd discloses all the claimed limitations as shown above but fails to teach wherein the container is provided with a cutting film, a pull handle, a cutting line and a closer for closing the openings on the container.

12. Schmidt teaches that it is known in the art to manufacture a container with a closure comprising a cutting film (3), a pulling handle (5), a cutting line (9) and a closer (4).

13. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have manufactured the container of Lloyd with the closure taught by Schmidt in order to provide the container cover with a tamper evident means and since such a modification would be a substitution of one know part for another to obtain a predictable result.

14. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd in view of Schmidt as shown above and further in view of Hogaboom (U.S. Patent No. 2,308,241).

15. The modified container of Lloyd teaches all the claimed limitations as shown above but fails to teach wherein a paper filter is received in the sub-receiving cavity.

16. Hogaboom teaches that it is known in the art to use a paper filter (col. 2, line 31-33) with a liquid holding container.

17. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have manufactured the sub-receiving cavity of the modified container of Lloyd with a paper filter, as taught by Hogaboom, in order to make it easier to transport the filter and a liquid together.

18. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd in view of Fontaine (U.S. Patent No. 2,740,575).

19. Lloyd teaches all the claimed limitations as shown above but fails to teach wherein the main body is a metal can, paper pack, or pouch.

20. Fontaine teaches that it is known in the art to manufacture a dual compartment container as a paper pack (col. 1, lines 48-49).

21. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have manufactured the container of Lloyd as a paper pack, as taught by Fontaine in order to keep the production cost of the container low and since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

22. Claims 1, 8, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woollen in view of Kim (U.S. Patent Application Publication No. 2003/0173237).

23. Regarding claim 14, Woollen discloses all the claimed limitations as shown above but fails to teach wherein the spouting member includes a sub-spouting member.

24. Kim teaches that it is known in the art to manufacture a dual compartment container with a spouting member having a sub-spouting member (Fig. 3, bending part of straw).



25. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have manufactured the container of Woollen with a sub-spouting member, as taught by Kim, in order to make it easier to drink from the spouting member.

26. Regarding claims 1, 8 and 15, Woollen teaches a food/beverage container comprising a main body (11) having a main receiving cavity (12) container contents (20) and a spouting portion (19) for discharging contents, a sub receiving cavity (10) formed in the main receiving cavity and being separated from the main receiving cavity (Fig. 3), but fails to teach wherein the spouting portion includes a folding portion so that the spouting portion is capable of bending into the sub-receiving cavity.

27. Kim teaches that it is known in the art to manufacture a dual compartment container with a spouting portion having a folding portion so that the spouting portion is capable of bending into a sub-receiving cavity (Fig. 3, bending part of straw).

28. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have manufactured the container of Woollen with a folding portion, as taught by Kim, in order to make it easier to drink from the spouting portion.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY ALLEN whose telephone number is (571)270-7426. The examiner can normally be reached on Monday through Friday 8:00 AM TO 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. A./  
Examiner, Art Unit 3781

/Anthony Stashick/  
Supervisory Patent Examiner, Art  
Unit 3781